IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 19098 OF 2005

Date: 30.08.2005

BETWEEN:

Bhupatiraju Venkateswara Vara Prasada Bapi Raju

.... PETITIONER

Vs.

Bheemavaram Municipality,

Rep. by its Commissioner,

Bheemavaram, West Godavari District.

.... RESPONDENT

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No. 19098 OF 2005

ORDER:

The petitioner claims to be the absolute owner of the land admeasuring Acs.0.32 in S.No.285/17 situated at 7th Ward (at present 16th Ward) Narsaiah Agraharam of Bheemavaram Municipality. When the municipal contractor tried to remove Eastern side compound wall, the petitioner filed a suit being O.S.No.527 of 2004 on the file of the Junior Civil Judge, Bheemavaram for granting injunction. The same is pending. The petitioner also filed an application for grant of temporary injunction, which is also pending. In the meanwhile, the respondent municipality served a notice dated nil, purporting to be under Section 192 of the A.P. Municipalities fact, 1965 (for short 'the Act') calling upon the petitioner to remove the encroachments on the municipal land (road and park) to the extent of 104 square yards. Assailing the same, the present writ petition is filed.

Learned counsel for the petitioner, Sri O. Manohar Reddy, submits that though this is an order under Section 192 of the Act directing the petitioner to remove the alleged encroachments, the same was not preceded by a notice. He however, submits that since

1942 onwards the petitioner has been in possession of the land and therefore the respondent ought to have conducted an enquiry.

A reading of Section 192 of the Act would show that the Commissioner is empowered to cause to be removed or altered, any encroachment. Section 192 of the Act is silent as to issue of any pre-decisional or post-decisional notice to a person, who allegedly encroached the municipal land, whereas Section 194 of the Act empowers the Commissioner to evict persons from municipal premises, temples on service of prior notice. Though the operation of Section 192 and Section 194 is in two different situations, the object of the provision is the same, namely, to secure the legitimate right of the municipality. Therefore, it is permissible to read the issue of prior notice even when action is taken by the Commissioner under Section 192 of the Act. If the issue of notice prior to action under Section 192 is not read, the entire provision is likely to fail the test of reasonableness.

The affidavit discloses that the petitioner's grand-father and his brothers partitioned the property in which the land in S.No.285/1 fell to the share of petitioner's grand-father, after which the petitioner succeeded to the property. This strong reason, which compel this court to direct the respondent to treat the impugned order/notice dated nil under Section 192 of the Act as a notice to the petitioner. The petitioner is given two weeks time from the date of receipt of a copy of this order to submit explanation, which shall be considered by the authorities in accordance with law, duly considering the evidence that may be produced by the petitioner. Till this exercise is done, there shall be status quo as on today.

The Writ Petition, at the admission stage after hearing the learned Standing Counsel for Municipalities, is accordingly disposed of.

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(**V.V.S. RAO, J.)**

30th August, 2005

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